UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
TANG, KENNETH

ART UNIT	PAPER NUMBER
2127	

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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

Office Action Summary	Application No. 09/496,069	Applicant(s) YOSHIMURA ET AL.
	Examiner Kenneth Tang	Art Unit 2127

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>24 March 2003</u> .

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-8</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-8</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____ .

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

This final action is in response to paper number 6, Amendment A, filed on 3/24/03.

Applicant's arguments have been fully considered but they are not deemed to be persuasive.

Claims 1-8 are presented for examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

1.   **Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et**

al. (hereinafter Chen) (US 5,553,235) in view of Gerardin et al. (hereinafter Gerardin) (US

6,222,822 B1), and further in view of Adl-Tabatabai (US 6,170,083 B1)

Referring to claim 1, Chen teaches a system diagnosis apparatus that diagnoses system

resources of a computer system, comprising:

-      an acquisition unit which acquires information on a utility rate of the system resources

        and a queue for the system resources *("capturing performance statistics", see Abstract,*

        and "two means of acquiring information about the monitoring of consoles and

        instruments", col. 7, lines 10-16, and "statistics for a system resource", col. 22, lines 53-

55, and "two statistics: level and queue", col. 69, lines 34-35); Runtime/measuring time

is a performance statistic and is a measure of utility.

- a memory unit that stores thresholds of the utility rate and the queue, wherein the

  thresholds represent the limits at which the system resources perform desired

  performances *("threshold alarm value", "stored in a record", col. 16, lines 6-19, and*

  "recording subsystem 20", see Figure 5, and "information", "monitoring console's

  configuration", "stored in the recording file 100", col. 6, line 66, and "values are

  individual statistics", "recorded", col. 8, lines 27-33, "capturing performance

  statistics", see Abstract, and "two statistics: level and queue", col. 69, lines 34-35); It is

  inherent that a computer system has a memory unit (col. 3, lines 17-20).

- a diagnosis unit that diagnoses the performance of the system resource ("apparatus",

  "performance diagnostics", See claim 11).

Chen fails to explicitly state that the diagnosis of the performance of the system consists of:

- system resource has lowered when the utility rate is higher than the threshold of the

  utility rate and the queue length is shorter than the threshold of the queue length, or

  diagnoses that the number of the system resources is insufficient when the utility rate is

  higher than the threshold of the utility rate and the queue length is longer than the

  threshold of the queue length.

However, Gerardin teaches using a queue threshold which detects whether the queue is longer

than the queue threshold *("queue threshold detector", "threshold exceeded-signal", "queue*

occupancy exceeds a predetermined threshold level", see claim 1). In addition, the reference of

Adl-Tabatabai teaches a utility value being compared with the threshold value at step 480, and if

the threshold value is exceeded, the system resource is lowered and then needs to be optimized

("execution", "threshold value", "optimized", col. 6, lines 25-28). Therefore, it would have

been obvious to one of ordinary skill in the art at the time the invention was made to combine the

features of a threshold compared to a queue and utility level for the reason of optimizing the run

time of the system by determining the limit or defining point where optimization needs to begin

in the diagnosis.

       Referring to claim 2, Chen teaches:

- a system resource determining unit which determines a system resource capable of giving

  the desired performance when it is diagnosed by the diagnosis unit that the performance

  of the system resource has lowered, or determines a number of the system resources

  capable of giving the desired performance when it is diagnosed by the system diagnosis

  unit that the number of the system resources is insufficient *("library", "performance*

  monitor recordings", "diagnosis", "poorly performing data processing systems",

  "capturing performance statistics", see Abstract);

Adl-Tabatabai inherently teaches:

- an ordering unit which orders the system resource determined by the system resource

  determining unit as the system resource for upgrading.

Adl-Tabatabai discloses using and comparing a threshold to determine when to order the system

for optimization *("execution", "threshold value", "optimized", col. 6, lines 25-28)*. It is

inherent that the processor makes the order for optimizing.

Referring to claim 3, Chen teaches:

- where the ordering unit transmits, utilizing a network, the ordering information on the

  system resources to a device installed at the supplier of the system resources *(network,*

  see Figure 8, item 200, network send/rcv interface 70, and data sources 210, and

  "identifying data suppliers", col. 12, line 28). The computer processor is a unit that

  makes the order.

Referring to claim 4, Chen inherently teaches:

- a notifying unit which notifies, utilizing a network, the result of diagnosis by said

  diagnosis unit to the user of the system.

Chen discloses "receiving notification of a defective condition" *(see Claim 10).* Chen also

teaches a "performance monitor tool" which interacts with the user for monitoring (diagnosis)

and also provides an interface for interaction (notification) with a user to control processes

within a data processing system *(col. 4, lines 60-67).*

Referring to claim 5, Chen teaches the following:

- a memory unit storing in correlation to each of the system resource a flag indicating

  necessity or not of upgrade, which necessity is judged by the user;

- ordering unit orders only the system resources that have a flag that indicate necessity of

  upgrade out of the system resources determined by the system resource determining unit

  as the system resources for upgrading.

Claim 5 is rejected for the same reasons as stated in claim 1. It is inherent that a flag is used to

represent a boolean variable (necessity or not of upgrade).

Referring to claim 6, Chen teaches the following:

-   acquisition unit acquires information on a response time of the system resources in

    addition to the utility rate and the queue

-   memory unit stores a threshold of the response, which threshold represents the limits at

    which said system resource exhibits a desired performance, in addition to the thresholds

    of the utility rate and the queue

-   diagnosis unit makes the diagnosis on the basis of the result of comparison between the

    acquired response time and the threshold of response time.

Claim 6 is rejected for the same reasons as stated in the rejection of claim 1. In addition, Chen

discloses that the response time is monitored in the system ("concerned with monitoring of the

response time" by the "Dynamic Data Supplier program", col. 75, lines 10-19).

Referring to claims 7 and 8, they are rejected for the same reasons as stated in the

rejection of claim 1.

ARGUMENTS

2.   *Applicant argues on the 4th paragraph of page 8 that the Chen reference does not
disclose a reference for carrying out diagnostics, but rather a system for displaying results of
diagnosis using data received from a data source through a network.*

In response, Examiner respectfully disagrees. The results of diagnosis comes from

carrying out of the diagnostics.

3.   *Applicant argues on the 1^(st) paragraph of page 9 that the Chen reference does not
describe the "level and queue."*

In response, Examiner respectfully disagrees. Chen discloses "level and queue" on col.

69, lines 34-35. In response to applicant's argument that the references fail to show certain

features of applicant's invention, it is noted that the features upon which applicant relies (i.e.,

"level and queue") are not recited in the rejected claim(s). Although the claims are interpreted in

light of the specification, limitations from the specification are not read into the claims. See *In

re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

4.   *Further, the Chen reference does not disclose providing either a system diagnosis
apparatus or a system diagnosis method that diagnose the performance of system resources
based on a system utility rate being higher than a threshold level and a queue length being
longer than a queue length threshold level.*

In response to applicant's arguments against the references individually, one cannot show

nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re

Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant is directed to the

original rejection of claim 1.

5.   *Applicant argues that Gerardin does not disclose a system diagnosis apparatus or a
system diagnosis method that diagnoses the performance of system resources based on a system*

utility rate being higher than a threshold level and a queue length being longer than a queue length threshold level.

In response to applicant's arguments against the references individually, one cannot show

nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re*

Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Examiner uses Adl-Tabatabai in

combination with Chen and Gerardin.

6.   *Applicant argues on the 1ˢᵗ paragraph of page 10 that the Adl-Tabatabai reference does not disclose a system diagnosis apparatus or a system diagnosis method that diagnoses the performance of system resources based on a system utility rate being higher than a threshold level and a queue length being longer than a queue length threshold level.*

In response to applicant's arguments against the references individually, one cannot show

nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re*

Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Examiner uses Adl-Tabatabai in

combination with Chen and Gerardin.

7.   *Applicant argues on the 2ⁿᵈ paragraph of page 10 that the cited references do not teach the feature of claim 2.*

Applicant's argument has not been found to be persuasive.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Kenneth Tang whose telephone number is (703) 305-5334. The

examiner can normally be reached on 9:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Follansbee can be reached on (703)305-8498. The fax phone numbers for the

organization where this application or proceeding is assigned are none for regular

communications and none for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is none.

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June 4, 20033

MAJID A. BANANKHAH
PRIMARY EXAMINER